THE USE OF CRIMINAL INTERROGATION METHODS WITHIN A POSTMODERN AMERICA

An Undergraduate Research Scholars Thesis

by

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Submitted to the Undergraduate Research Scholars program at
Texas A&M University
in partial fulfillment of the requirements for the designation as an

UNDERGRADUATE RESEARCH SCHOLAR

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May 2020

Major: Sociology

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ABSTRACT

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Literature Review

Postmodernism is a term used by sociologists to define the era after modernity and structuralism (around 1960s onward to present). Sociologist and postmodernist, Jean Baudrillard, in his book *America,* described American society as a collection of rootless, circulatory fictions that have no ultimate meaning. Postmodernists are skeptical about meaning, and they see the present social world as a simulacrum of reality. Sociologist Richard Rorty believed that postmodernism was full of irony, where someone could use wording alone to spin just about anything into a good or bad light. Because of this, no one thing is true or solid in society because irony deconstructs solidarity.

Thesis Statement

Postmodernism affects and further explains the use of interrogation methods in American military court-martial investigations.

Theoretical Framework

For this research, I will analyze the record of trial (Leahy ROT) of US v Michael Leahy, a court-martial that involved a challenge to the use of standard interrogation techniques with the

argument that they constitute a coerced confession, the videotape of Leahy's interrogation that was shown in its entirety during the court-martial, and the testimonies as well as cross-examination of the two interrogators. To be able to analyze these videotapes, I will be using Pauline Rosenau's glossary from her book *Post-modernism and the Social Sciences* as the primary instrument to analyze these videotapes. I will be looking at selected terms from the glossary such as decentering, deconstruction, privileged, simulacrum, and hyperreality. I will also be using Fred Inbau and John Reid's book, *Criminal Interrogation and Confessions*, to be able to clearly outline routinized methods and practices used by the United States government. This book includes step-by-step instructions to interview (interrogate) and gather a confession from the viewpoint of the interviewer (interrogator). By use of the glossary and the book as tools for understanding postmodernism, I plan to clearly show the ways in which interrogation techniques have been affected, for the worse, by a postmodern society.

Project Description

Through this research, my goal is to understand how postmodern terms accurately explain the current trends in American interrogation techniques. I will apply postmodern concepts to typical interview and interrogation techniques such as ego up, we know everything, fake rapport, and fake empathy, among others. It is important to note that none of these techniques can be finally and ultimately reduced to any one, single, method of interrogation or interview. The use of the many of these techniques is ubiquitous in all United States police departments as well as military investigations, and most use psychological tactics to make the suspect incriminate themselves. These techniques are controversial methods, and some are banned in Canada, the United Kingdom, and Australia where many are seen as a form of coercion.

The importance of my research is that it uses primary source data drawn from the actual videotape and record of trial where the use of investigation techniques were prominent in the preparation for the military court-martial. This data will illuminate some of the controversies surrounding the use of the techniques. I have found that, because of postmodernism, the distinction between right and wrong in the interrogation room has been blurred.

ACKNOWLEDGMENTS

I would like to give my upmost gratitude and respect to my professor, research advisor, and academic mentor, Dr. Mestrovic. His confidence and support in me are something that I will cherish both in my life and future career as an attorney. Likewise, this research could not have been done without his dedication and expertise to the cases mentioned.

I also want to give credit to the Sociology department at Texas A&M for sparking my interest in the pursuit of capital T-truth. I will be forever grateful for the education and family that this department has provided me.

INTRODUCTION

There is a case where interrogation techniques have clearly been influenced by postmodernism: the case of Sergeant Michael Leahy from the Baghdad canal killings. Through this example, Fauconnet's concept of responsibility is clear: responsibility tends to fall on someone, no matter if they are legally innocent or guilty.

Postmodernism allows for these types of interrogation techniques to be able to occur. The criminal justice system has become a hyperreality of what it once was, and the distinctions of real differences, like victim and victimizer, have become blurred. Likewise, Americans tend to put a spin on the criminal justice system, with most people choosing to believe without question that it serves true justice. Everything has become fake; fake rapport, fake sincerity, and deceit especially are used within the techniques (Inbau and Reid). This is all done for the sake of a confession, to place responsibility on someone, anyone.

My research will focus primarily on interrogative techniques in military criminal investigations. It has been found that many war crimes in the past, Abu Ghraib for example, have been crafted out of error or dysfunctional conditions caused in part by the government or the military. However, the blame for these crimes has fallen on individuals who are lower in rank like a medic, a truck driver, or even a prison guard (instead of falling on a commander or someone higher up in the food chain). In most all courts-martial, there is a trend on part of the United States legal system to not be able to account for full responsibility for the crimes at hand. The doctrine of command responsibility is no longer invoked, and, now more than ever innocent people are falling victim to having the postmodern cloud of responsibility fall on them.

Previous research on the use of interrogation techniques on military court-martials has been published by Dr. Mestrovic in his book, *The Trials of Abu Ghraib: An Expert Witness Account of Shame and Honor*. Dr. Mestrovic used sociological theories drawn from Emile Durkheim and David Reisman. My project is different in that it will build upon this research by using a body of social theory that has not been used in this area of research, namely, postmodern social theory.

CHAPTER I

POSTMODERNISM DESCRIBED

Postmodernism is hard to put into words because it is not one singular thing. Many postmodernists differ in their exact definitions; however, the critics of postmodernism all focus on the postmodernists who tear down capital T-truth. At best, postmodernism can be described as an approach that attempts to define how society has progressed to an era beyond modernity. In this case, modernity is also equivalent to structure. Postmodernists, those who recognize this phenomenon, describe the change as starting around the 1960s when structuralism ended. Postmodernists are skeptical about meaning and believe that you cannot replace meaning with something else. Jean Baudrillard said it best, that society is a collection of rootless, circulatory fictions. Thus, postmodernism is all about the post-truth future.

Postmodernist Jacques Derrida believed that in an age of structuralism, there always needs to be a center. However, in a post-structure era, the center is no longer the center. Many postmodernists agree that in today's society the focus is on the margins. An example of this is downtowns where a community once resided and gathered. Now, people have no central point in a city, because of the mass populations spreading outwards to the suburbs.

In the post-structure/post-truth world now, Baudrillard coins the term "implosion of meaning" (Baudrillard 3). The implosion of meaning refers to how we as a society will eventually implode from the overload of information that we have now. For example, as we learn more about the Holocaust, there are more Holocaust deniers and anti-Semitic. The logic is gone, and in its place is a fact-free narrative. Another example is that as we learn more about the environment, there is a higher rate of climate change and global warming disputers. The

overstimulation from the incredible amount of information from the technology boom makes the true meaning of the information lost, much like when a building implodes it will collapse in on itself. With the Milky Way Galaxy of choices in the world, the choices and decisions are seemingly endless. We as a society do not know what to believe anymore.

Postmodern Definitions

Throughout this work, I will bring in specific postmodern words for description purposes. I will be using Pauline Rosenau's definitions from her work, *Post-Modernism and the Social Sciences*. Below are postmodern definitions that I will be using throughout this research.

- Decentering: The absence of anything at the center or any overriding truth. This means concentrating attention on the margins (you are no longer looking at a central character or the main point of an argument).
- Deconstruction: A postmodern method of analysis. Its goal is to undo all constructions. Deconstruction tears down text and reveals its contradictions and assumptions. Its intent, however, is not to improve, revise, or offer a better version of the text. This can be seen with the recent tearing down of history through confederacy statues. Likewise, past presidents who were once heroes are now deconstructed as villains.
- Deprivileged: To cut everything and everyone down to size; this is seen often as parents are replaced by media and peers.
- Fake sincerity: A fight for image and a series of empty gestures. This was first coined by Riesman.
- Hyper-reality: In this, reality has collapsed, and today it is exclusively image, illusion, or stimulation. The model is more real than the reality it supposedly represents. Hyper-reality is a model of a real without origin or reality.

- Narrative: The postmodern opinion varies on this definition. Postmodernists severely criticize global world views, and meta-narratives. Meta-narratives are modern and assume the validity of their own truth claims, however, mini-narratives and local narratives are just stories that make no truth claims and are therefore more acceptable to postmodernists.
- Pastiche: A free-floating collage of ideas which glorifies contradiction and confusion.
- Privileged: To give special attention or attribute a priority to an argument, person, event, or text. Postmodernists oppose privileging any specific perspective.
- Simulacrum: A copy of a copy, in which there is no original. There is no distinction between real and the model.
- Text: This includes all phenomena, all events. Postmodernists consider everything as text.

Why Postmodernism Is Problematic

I am using postmodernism as a vehicle to view and analyze interrogation methods because I believe it is the root of many issues that arise in the interrogation room. By utilizing this method of social theory, one will be better able to understand trends in the interrogation methods as well. In a postmodern America, narrative shaping occurs everywhere (the internet, Congress, and even military courts-martial), and capital T-truth is muddied. "People focus on the underlying facts… but the underlying facts are not the things that matter in terms of narrative shaping" (Illing). Narratives nowadays are utilized often in the absence of facts. "In the 21st century media ecosystem, alternative facts… can reign supreme or at the very least blot out the truth (Illing)." It is also important to note the three points about a postmodern narrative: (1) there is no truth for postmodernists, just stories, (2) narratives are just stories, (3) some are big stories (but postmodernists hate these); postmodernists are much more comfortable with local stories

where there is no claimed truth. Because there are no exclusive claims to truth, there is no thing that is concrete. A scientist's study will become one story among many, and there will always be a plethora of counter studies ready to reduce the big story into a bunch of little and hollow studies. Jean-Francois Lyotard calls this the postmodern condition. Science has lost its legitimacy has thus become a language game. He said, "the grand narrative has lost its credibility" (Lyotard 37). The triumph of breaking down the bigger picture with the ease that comes from information has destroyed all grand narratives. When science is questioned and broken down into steps (the scientific method) it loses its prestige. With the loss of prestige comes decentering, where science was once the center, the focus now is on the margins where no one thing dominates. Thus, we are left with a pastiche and confusing realm of information.

Another problem is irony. Postmodernist Richard Rorty describes irony as the ability to make anything look good or bad by re-describing it (Rorty 62). This is a problem because it is done in the absence of facts. Anyone can spin the truth in a post-structuralist environment. Because of the ability to spin, there are no firm standards to judge things on. The structure of right and wrong becomes warped and unimportant. In Rorty's book, *Contingency Irony and Solidarity*, he describes society as being split on almost everything, and therefore there is no feeling of solid ground on any issue. For this reason, postmodernists view America as a hyper-reality, where the images of things are treated as more real than the actual. Fake things, like genetically modified plants and plastic surgery, are viewed as better than the originals. With that, originality slips away as society begins to prefer similarities. Another example is that over time, most American cities begin to look like cookie cutter replicas of one another

Why Focus on Interrogation and Confession Methods

Confessions have a deeply rooted history in the United States (and in the world), and confessions in American law today are considered "the highest form of proof known to law" (Mestrovic, *The "Good Soldier" on Trial: A Sociological Study of Misconduct by the U.S. Military Pertaining to Operation Iron Triangle, Iraq* 220). How did it become a prosecutor's most prominent weapon in criminal law? A confession is any oral or written statement where an individual admits to something: a transgression, sin, or even act of crime. In a historical context, confessions have strong roles in religion. Confessions have been used for social acceptance and status quo, and even therapeutically when one feels the urge to get something off their chest. However, confessions have incredibly negative effects as well, and they can often harm the confessor.

"The introduction of a confession makes the other aspects of a trial in court superfluous" (McCormick 316). Confessions in criminal law have been a point of debate over the years, even though a confession is vital in most criminal cases. Almost every confession is brought on by a staged, and often manipulative, interrogation. These interrogation methods are skillfully designed to attempt to discover deception. It is important to note that this study does not single out any one particular method of interview or interrogation used in criminal investigations in the United States. This is because the selective use of interview and interrogation techniques borrows from the historical interview and interrogation techniques in the US military and police, various military field manuals on interrogation, and ultimately, to techniques borrowed or modified from North Korea, the Soviet Union, and elsewhere. These techniques also borrow from the history of the interview and the history of confession as a religious tactic.

The method that I will follow in this study is to apply postmodern concepts to typical interview and interrogation techniques such as ego up, ego down, we know everything, fake rapport, and fake empathy, among others. But, to repeat, none of these techniques can be finally and ultimately reduced to any one, single, method of interrogation or interview. One of the most common techniques for interviewing is outlined in the manual, *Criminal Interrogation and Confessions* (Inbau and Reid). At a point in time the president of the company that teaches the practices was asked if the methods caused innocent people to confess, he replied, "No, because we don't interrogate innocent people" (Kassin 36). As the research suggests, the president is incorrect in his statement. There are many flaws to this technique, and many innocent people end up behind bars because of how easily it forces a confession.

Investigator response bias is one of the innate flaws in the techniques. Researcher Saul Kassin and his team did numerous studies on the extent that special training increases someone's accuracy in discovering truth and deception in interviews and interrogations. A study done on college students in 1999 by Kassin and Fong showed that half were randomly assigned to learn a deceptive technique and half were not. The subjects were each shown videos of a denial of a fake crime committed: shoplifting, breaking and entering, a computer hacking, and vandalism. They were then tasked with finding who was guilty. The researchers found that those who had the training were more confident in their judgments but were actually less accurate than those who did not have the interrogation training. Kassin believed that the data was clear: the training made the interrogators biased toward seeing deception, and thus seeing guilt. This experiment supported the hypothesis that deception training may lead interrogators to be biased towards pre-judgement of guilt. This, with high rates of confidence, also leads to high error.

CHAPTER II

SERGEANT LEAHY AND THE BAGHDAD CANAL KILLINGS

Sergeant Michael Leahy Jr. was a medic in the U.S. Army's 1st Battalion, 18th Infantry Regiment who had received a Purple Heart Medal. While on a mission in Baghdad, Iraq, he, First Sergeant John Hatley, and Sergeant First Class Joseph P. Mayo captured detainees that were supposedly shooting at them, but with not enough evidence to keep them, had to release them. Later, all three were accused of allegedly killing the detainees in a canal. The reason I am focusing on this case is because of how much postmodernism is woven throughout the actions, interrogation, confession, and court-martial. Sergeant Leahy was guilty of a crime (second-degree murder). However, he was themed by CID (Criminal Investigative Division) agents into confessing to premeditated murder, which in the military has a sentencing of life in prison without the possibility of parole. That is a heavier sentencing than he should have received.

In the opening statement of the trial, the prosecution argued that all the case was about was the premeditated murder of five Iraqi detainees. They go on to say, that “it’s a case about the complete breakdown of unit discipline and moral courage. The five murders occurred on two separate days. The first day that the government will discuss and present evidence on was at the end of March 2007. The government will call this The Canal Murders” (Leahy ROT 382).

On the other hand, the defense argued that there are so many situational factors that affected the purity of the case. The defense attorney, Frank Spinner, goes on to say that Sergeant Leahy had a mission where there was no plan to go out and murder Iraqis like the government stated. “The evidence is going to show that when Sergeant Michael Leahy went out on his mission on the day of the canal incident, that the government discussed already, he had very few

choices. He did not have a choice to leave Iraq, all he could do was hope he could survive the day" (Leahy ROT 388). According to Spinner, Sergeant Leahy's unit was in a village when they were fired on. They fired back, and local Iraqis told them who the shooters were and where to find them. The unit followed them because of their mission: go and capture the bad guys. According to Spinner, "they go out and try to capture the bad guys, find out who was shooting at them, and see if they could locate any weapons, ammunition, spent shells because the mission was, at that point, to collect evidence so that they could, if they catch the people who were shooting at them, that they could turn it in and that they could be prosecuted" (Leahy ROT 389). The unit captured four 'detainees' and took them back to COP, however they learned that the Iraqi police refused to take the prisoners, and they were released. "Then the evidence is going to show that apparently First Sergeant Hatley, not Sergeant Leahy, Sergeant First Class Mayo, not Sergeant Leahy, decided that they were going to get rid of the detainees" (Leahy ROT 392). It is important to note that despite the nature of the crime, leniency was granted at a later time and a general in Germany gave Sergeant Leahy clemency, which reduced his sentence from life to 20 years.

The Interrogation

Even though Sergeant Leahy was eventually granted clemency, it is incredibly important to look at the nature of what happened in his trial, namely the interrogation. In the Defense Brief, it is noted that his company commander took Leahy's phone, but did not tell him why (at this point he was not aware of any accusation). He also made Leahy sleep in his contacts and dirty clothes on his couch. Because of the ambiguity of the situation, Leahy became restless and sleepless. Leahy claimed that when he went into the interview room there were no windows but instead a two-way mirror. The prosecution later stated that there was a window but no mirror in

the room. The only consent Leahy believed he was offered was for the consent of the videotaping. Make note too that the second special agent, interrogator 2, had a handgun on himself for 9 minutes of the interview. It is unknown whether this was a fear mechanism or was just forgetfulness as they were on a military base.

The lead special agent, or interrogator 1 for the sake of this research, used fake rapport to try to further the interrogation along. In the defense brief, it is noted that interrogator 1 said the following: "just relax, everyone gets freaked out just try to calm down, call me [by my first name], I am going to keep this as informal and friendly as possible, I am not going to play mind games with you, I'm going to be completely honest with you," and even, "it is not a fishing expedition" (Leahy ROT 552). He also said "we are not accusing you of anything today.. you are suspect like every other (person) out there… do not make it more than it is" (Leahy ROT 553). The Special Agent pretended to level with Leahy and said how he understood how frustrated Leahy and the unit would have been in the incident that occurred. He also went on to simulate fake rapport about Leahy's career path, he discussed how he thought the deployment for 15 months was insane, and he tried to talk about Leahy's religious views with Leahy.

Only 25 minutes into the investigation interrogator 1 told Leahy he was going to read his rights and allow Leahy to talk. However, it wasn't until 33 minutes into the "interview" that interrogator 1 read Leahy his rights for the first time. At this time, interrogator 1 lied when he said that everyone was talking, and that Leahy shouldn't be that one guy who didn't talk. He brought up Leahy's relationship with First Sergeant Hatley, who was like a father to Leahy. At 45 minutes into the interview, interrogator 1 told Leahy that the detainees were "obviously terrorists" and that they "deserved to be killed." However, he also made note that the important thing for Leahy was whether he was having "hamburger meat or steak in your freezer.." and to

think about his family. Interrogator 2, on the other hand, later got into Leahy's face and told him that CID had pictures and testimony (however this was a lie as they did not have photos and had not interviewed the 13 individuals). Leahy was not allowed to use the bathroom, eat, or take a smoke break during interrogation (Leahy ROT 555).

The Trial

Many things happened during the trial that are important for this research on postmodernism in the criminal justice system. The Military Judge established that Leahy was being charged with premeditated murder, conspiracy to commit premeditated murder, and obstruction of justice. This was very different than what he could have been charged for: second-degree murder. The military Judge also established that Leahy had waived his right to an Article 32 or pre-trial hearing. In short, the defense said Leahy's admission of guilt was a form of forced confession which is unconstitutional, but the prosecution said the confession was voluntary (note that Miranda rights were told that they would be read 23 minutes into the interrogation, however they were read much after). The defense relied on US v Byers for its proposition that interrogator 1 interviewed the accused prior to informing him of his rights, and therefore used deception. US v Byers says that you cannot interrogate the accused without first informing him of the nature of the accusation. The government's reply to this was that "a CID agent is allowed to use it during an investigation.." and that "it is obvious.. from the videotape that the will of the accused was not overborn by the actions of the CID SAs" (Leahy ROT 243).

In the beginning of the trial, the defense wanted to bring in an expert witness to testify that the methods used in the interrogation room were coercive. The Military Judge would not allow this testimony on the ground that "there is no new evidence" and "there's no new argument on the law" (Leahy ROT 243). The Military Judge also said, "My initial impression is that the

confession falls under the category of a coerced compliant confession. Furthermore, it appears that the CID agents used the classic Reid technique involving isolation, the presentation of false evidence, and the maximization and minimization of potential outcomes from the interrogation" (Leahy ROT 243). In that response, it is clear that the Military Judge recognized the coercive technique but still ruled the technique as lawful. This is despite the fact that the deceit was clear with the "presentation of false evidence." It is hard to see why that would be allowed and not counted as deceit by the Military Judge when the law demands truth from witnesses (promise to tell the truth, the whole truth, and nothing but the truth?). A confession based on the presentation of false evidence, from a commonsense viewpoint, is in fact coerced. It will later be noted that CID agents, in many cases, lie to suspects routinely, and such testimony from the coercion is permissible in courts.

Interrogator 1 listed the "Reid Interview and Interrogation Course" as part of his extensive training, however in his cross-examination, interrogator 1 noted that he was talkative with Leahy just so they could get to know one another. The prosecutor asked him at one point if he was building any themes, telling a narrative to get a response, and at first he denied it, but later during the cross-examination he agreed and even discussed further how to theme.

CHAPTER III

MIRANDA, CUSTODY, AND RESPONSIBILITY

The Miranda warning is a protection against police intimidation. According to the history of Miranda, prior to the Miranda warning confessions had to be voluntary on the part of the suspect. According to the official website of Miranda warnings ("History of Miranda Warning"), Miranda v. Arizona was a case were Ernesto Miranda, the defendant, was accused of robbery, kidnapping, and rape. He confessed during police interrogation but was overturned due to alleged intimidation tactics from the police. After a retrial, he was convicted but was assured of a fair conviction. The outcome of that case, Miranda v Arizona, upholds that suspects must be informed of their specific legal rights when they are placed under arrest. The website also points to Escobedo v. Illinois as a defining case in the creation and upholding of the Miranda warning. In 1964, the case provided an addition, that the "suspect has the right to counsel being present during police questioning or to consult with an attorney before being questioned by police if the police intend to use the answers against the suspect at a trial, or if the person being questioned is being detained and questioned against their will" ("History of Miranda Warning"). Likewise, in 1968, California deputy attorney general Doris Maier and district attorney Harold Berliner made the final text for the Miranda warning. Miranda protects people's rights because it explains what options are available. It is a legal necessity in the United States because it provides to the police that the suspect understands their own rights through a clear answer. In Dickerson v. United States (in 2000), the Supreme Court upheld the warning and waiver requirement. In Missouri v. Seibert (in 2004), the court refused to accept any confession given after a warning or one that is delayed.

Miranda encompasses the right to remain silent which reminds the suspect that they are not required to say anything, and that whatever they do say can be used against them in a court of law. It tells the suspect of their right to speak with a lawyer before and during the police questioning, and that a state lawyer will be appointed if the suspect cannot afford one. A suspect is also reminded that they are allowed to stop answering questions at any time. Most importantly, Miranda tells the suspect of their rights and informs the suspect that they are under arrest.

Miranda has always been a point of contention. Many critics believe that as a result of the warning and waiver requirement, confession rates have declined. These critics believe that this is bad because, according to the critics, it results in more criminals on the streets (Kassin points to Cassell's work in 1996). Others support the Miranda warning, saying that it has instead increased public awareness of constitutional rights and that the statistics are not a drastic as the critics point out (Kassin 39).

The word custodial refers to whether the suspect is in custody: whether or not the police have taken away any freedoms from the suspect. Interrogation, on the other hand, refers to questioning. According to a legal encyclopedia, "this questioning can be in the form of an officer asking the suspect direct questions, or it can be comments or actions by the officer that the officer should know are likely to produce an incriminating reply" (Rydholm). The website also states that to "determine if someone is subject to custodial interrogation per Miranda, Courts have generally used a 'totality of the circumstances' test to figure this out. For this test, a court will look at a number of factors and focus on the 'physical and psychological restraints' on the person's freedom during the interview" (Rydholm). The website cites U.S. v. Axsom for this reference. If the suspect is subject to custodial interrogation, then the Miranda warning requirement is necessary.

According to a legal encyclopedia, courts will look at several different factors to determine if an interrogation was in fact custodial. The court will try to determine if the environment was reasonable, coercive, or even intimidating. According to this legal encyclopedia, the following are questions asked to be able to determine if the interrogation was custodial or not. Here verbatim questions in the legal encyclopedia to determine if an interrogation was custodial. “Who asked the questions? Was the questioner in a position of authority? Was he or she carrying a gun? The identity of the questioner goes to the intimidation level of the interview. For example, a court may consider an armed police officer or prison guard more compelling than a postal inspector. How many officers were there? More officers points to a more coercive setting” (Rydholm).

Fauconnet on the Concept of Responsibility

In order to use postmodernism as a tool to analyze the interrogation methods, we must first understand why the trends are happening in the interrogation room and beyond. The role of responsibility has been in cultures as long as time, however, how responsibility is treated changes over the years. Paul Fauconnet noted that in societies held together by mechanical solidarity, society is collective and communicable, and not personal like those held together in organic solidarity (Fauconnet). Sociologist Ronald Lorenzo agrees with Fauconnet that as societies become more civilized, personal responsibility begins to change. According to Lorenzo, “the history of responsibility is one of responsibility becoming personal rather than collective or communicable” (Lorenzo 66). Society, as Fauconnet says, shifted from mechanical to organic, and the idea of collective responsibility was transformed. Lorenzo notes that crimes in civilized societies first feel like a collective responsibility, but the response by society is “to pass the

feeling of responsibilities to the most vulnerable to punishment, whom Fauconnet characterizes as the least socially significant persons in a society" (Lorenzo 66).

- "We have said that the emotion aroused by a crime is propagated in waves. The entire society, then- people and things- should always be responsible for all crimes. However strange this may seem, the truth remains that society tends to regard itself as wholly responsible for each crime, and one of the functions of punishment is precisely to discharge society from that responsibility. Nevertheless, the obvious fact is that the number of a society's members to whom punishment for crime is applied is always relatively small, compared with the number of those whom punishment does not reach. In other words, irresponsibility is the rule, and responsibility is the exception. We all believe that men and things are protected against responsibility that threatens them. The positive and permanent sentiments felt for men and things impose a check to the destructible and transient sentiments born of a crime. A compromise is established. Wherever the moral barrier protecting any member of the society is strong enough to halt the propagation of anger and horror, there is irresponsibility. Even in societies where responsibility communicated itself, its propagation is always counteracted. Irresponsibility has merely the appearance of a purely negative notion; actually, irresponsibility results from the opposed resistance of positive forces" (Fauconnet qtd. in Lorenzo 68).

Many people become exempt from responsibility. Why are the generals and colonels not subject to the same investigations as their lower ranking cadets? The cloud of responsibility falls on the person or people with the least resistance, and these techniques are used on people who will take the fall like lower ranked cadets.

CHAPTER IV

INTERVIEWS TODAY AND INVOLUNTARY CONFESSIONS

Techniques that train interrogators to make a judgment, by themselves, of truth or deception in an interview are bound to have flaws. According to an interrogation manual, "The successful interrogator must possess a great deal of inner confidence in his ability to detect truth or deception, elicit confessions from the guilty, and stand behind decisions of truthfulness" (Inbau and Reid 78). Because of this, Kassin, in "The Psychology of Confessions", points out that the interrogation or interview processes are rigged from the start, and that they are a guilt-presumptive process. The interrogator has a theory, a narrative, and tries to pin it on the suspect throughout the interaction. According to Kassin, it is a confession or admission of guilt in which the interrogator deems his or her own work successful. "Clearly, this frame of mind can influence an investigator's interaction with suspected offenders" (Kassin 41).

Of course, in an interrogation those trained agents will come across suspects who refuse to speak, insisting on their rights (right to remain silent). According to Yale Kamisar, in "What is an Involuntary Confession," a manual-trained interrogator will be prepared to still find a confession from these types of suspects (the types who understand Miranda and wish to use it). The interrogator "will counter by pretending to concede him the right to remain silent (impressing him with his apparent fairness) and then, after some more psychological conditioning, ask him innocuous questions that have no bearing whatever on the matter under investigation" (Kamisar 731). Then the interrogator will slowly weave in questions pertaining more towards the actual offense. In the *Criminal Interrogation and Confessions Manual*, the authors, Inbau and Reid, put out this scenario: "Joe, you have a right to remain silent. That's your

privilege .... But let me ask you this. Suppose you were in my shoes and I were in yours ... and I told you, 'I don't want to answer any of your questions.' You'd think I had something to hide" (Inbau and Reid 111). The goal of the interrogators is to make invoking Miranda seem like the wrong thing to do, and that being completely available to police questioning is the "right" thing to do.

These trained interrogators are also prepared for those who wish to invoke their right to see a lawyer. The interrogator will usually try to prove that he can save himself (or his family) without a costly attorney. Kamisar uses this example: "Joe," the interrogator may add, "I'm only looking for the truth. . . . You can handle this [all] by yourself" (Kamisar 732).

The Loss of Miranda

Miranda was crafted as a safety valve for the protection of individuals from deception. It gives an audible understanding for both parties: that the rights have been given and understood. Of course, there are flaws. Studies (Kassin 33) show that there are parties who fail to understand Miranda such as those under 14 years of age and those with mental impairments. Kassin also reports that a seasoned suspect, someone who is not a stranger to the law, will invoke their rights much more than someone new to the law. People think their innocence is enough to set them free, so it is the people usually with no criminal background that tend to not waive their rights. They think "I have nothing to hide" and presume that invoking their rights is a confession of guilt. As mentioned earlier, police and interrogators trained in the special methods will also make the suspect feel as though invoking their rights is bad and not helpful. This way of thinking leaves many people susceptible to deceptive interrogation methods.

Miranda has a warning and waiver requirement that requires a signature to prove that the suspect understands their rights in an interrogation room. However, Kassin argues that this does

not have the protection that it was designed, and thus renders Miranda useless. The first reason, he states, is due to lack of understanding of what the rights mean and how to apply them. This could be due to age, mental health, etc. The second reason, according to Kassin, is that the police who have been diligently trained in these methods have learned how to overcome the waiver requirement. Kassin cites Leo's research, who found that four out of five suspects will waive their rights when in questioning. Leo's research suggests that interrogators use sympathy and try to be buddy-buddy with the suspects (otherwise known as implementing fake rapport which establishes a fake trust in the interrogator). They will also call the process a formality which minimizes the importance of Miranda. According to Leo, by overlooking Miranda, the perceived benefits of waiving one's rights look a lot better than any costs that could happen. The fake rapport between interrogator and suspect is planned and strategic: a social theme that attempts to gain more compliance in the questioning (Kassin 33).

Kassin also added that some studies (he points to Philipsborn, 2001 and Weisselberg, 2001) show that in some police jurisdictions they are informed by going off record. This means that they can get a confession outside of Miranda, even if they have already invoked their rights. Even though these types of statements are not allowed as evidence in state trials, the information gathered without Miranda will be used "both to generate other admissible evidence and to impeach the defendant if he or she chooses to testify" (Kassin 732).

FM 34-52

FM 34-52 is the key to be able to look inside the mind of an investigator. FM 34-52 (the 1992 edition) is the United States Army Field Manual written for interrogators working with enemy prisoners of war. However, it has been adapted over the years for investigators to use

while interrogating members of the military. There are two phases of the interrogation process that it lays out: the Approach Phase and the Rapport Posture (FM 34-52, 3-10).

The Approach phase is the initial contact between the interrogator and the suspect of a crime. This phase is deemed incredibly important as it starts the subject's willingness to communicate. The objective here is to establish a "friendly" rapport (I say that as it is clearly not friendly but instead one of deception). By establishing this rapport, it gains a willingness to cooperate from the subject. The interrogator will either presume a business-like relationship or they will take on a friendly and relaxed air. Even though there are several different methods, all have similar elements. The three common elements in the methods are to (1) to "establish and maintain control over the source and interrogation" (2) to "establish and maintain rapport between the interrogator and source" and (3) to "manipulate the source's emotions and weaknesses to gain his willing cooperation" (FM 34-52, 3-11). There are two postures of rapport that the document suggests: stern and sympathetic. Stern is used for older military members, whereas the sympathetic way is used for younger members. "One variation of this [sympathetic] posture is when the interrogator asks about the [subject's] family" (FM 34-52, 3-11). The main difference here is that with the sympathetic approach, the interrogator will show overall interest in the subject's case.

These are all of the methods that could be used: Developing Rapport, Recognizing the Breaking Point (Breaking Point Test), Direct Approach, Incentive Approach, Emotional Love, Emotional Hate, Fear-Up Approach, Fear-Down Approach, Pride and Ego-Up Approach, Pride and Ego-Down Approach, Futility Approach, We Know All Approach, Establish Your Identity, Repetition, Rapid-Fire, and Silence. As the list may seem inexhaustible, I would like to highlight those that are commonly used in the interrogation room. I will focus more on Rapport building

later on throughout this study, but for now I want to move focus to Fear-Up, Fear-Down, Ego-Up, Ego-Down, Futility Approach and the We Know All Approach.

Fear up is where a suspect's pre-existing fear about a situation is utilized by the interrogator. This process, according to the document, is mostly used for young and inexperienced suspects who are visually anxious. A "good" interrogator will convince the suspect that the interrogator themselves are the way out of the trap, and not the object to be feared. They will constantly remind the suspect of the cost and consequences of their actions, and how much worse off they will be if they do not cooperate. The interrogator might say things like "lying to me is a crime, some bad things have been said about you, people are pointing fingers at you, we will write our report as you lied and you will be the one to deal with the consequences, and you're not being investigated for crimes but that could change real quick depending on how this whole thing goes" (FM 34-52, 3-15, 3-16).

Fear down, on the other hand, is used in the case where fear can get in the way of cooperation in the interrogation. The interrogator will use fake rapport with the suspect and try to focus on why the suspect is anxious (usually this is done with pseudo-kindness). However, the field manual warns that the interrogator is "under no duty to reduce unjustified fear." This allows the interrogator to be able to manipulate any fear usually by reducing illogical fears while confirming logical fears. Physical touch is rendered to get on the same physical level as the suspect. Common tactics include lowering themselves to eye level with subject and placing a hand on the subject's shoulder. Phrases that are often said are: "what's bothering you, you have a lot going for you, after this your stress will be gone and you'll feel a lot better, take a breath, relax, and let's try to work through this together, and you're a victim and you're not on trial" (FM 34-52, 3-16).

Ego up is used for "low-ranking enlisted, junior grade officers" or anyone who has been "looked down upon for a long time." In this technique, the interrogator will try to speak highly of the suspect and even try to blow smaller details about the suspect out of proportion (i.e buttering them up). According to the field manual, the interrogator should look for physical gestures of the suspect (prideful glances, swelling of chest, stiff back) to indicate if the methods become successful. The following are things that an interrogator might say: "I have never seen a person in your position do so well, I can tell you're going to do great in your field, the military needs more people like you, you already told me x, y, and z, that was great but if you don't keep telling the truth all that good work is going to be for nothing" (FM 34-52, 3-14, 3-15).

Ego down is when the interrogator tries break down the suspect, usually by attacking any sense of personal worth. According to the manual this is used for suspects who "show any real or imagined inferiority or weakness about himself, loyalty to his organization, or captured under embarrassing circumstances." The Field Manual states that a subject that fits this description "can be easily broken with this approach technique." Here, the interrogator will attempt to attack these connections in the attempt to make the suspect defensive. The suspect will try to convince the interrogator that they are wrong all while accidentally and voluntarily providing more information to the interrogator. With a disgust filled or sarcastic tone, the interrogator might say: "this is not something a smart person would do, you should not value that group, remember where your true loyalty is, and if I knew my Commander did this I would not accept them" (FM 34-52, 3-18).

The *Futility* approach is where the interrogator will try to convince the suspect that any resistance during questioning is futile. The interrogator must be equipped with an arsenal of facts, presented in a logical tone and manner. In accordance, the interrogator must exploit any

physiological or moral weaknesses present. The interrogator might say, “someone will say something eventually, lying is of no use here, this battle is already lost, your unit will be destroyed without your cooperation, and the only way to speed this whole process up is to tell me what you know” (FM 34-52, 3-18).

The *We Know All* approach is one where the interrogator sets traps. It starts with the interrogator asking questions based on “known data” and then when the answer given is incomplete, not given, or not up to what the interrogator wants to hear, the interrogator will then answer for the suspect. Usually the reply is one of deceit, claiming that the interrogator knows it was a lie. A big factor of this approach is that a narrative is created, with just enough bits of truth to convince the suspect that the interrogator knows everything. To check if the suspect is being truthful, the interrogator is prompted to ask known questions as well. If there are unknown questions asked, and if the known questions are answered truthfully, then information is gathered. The interrogator might say: “that is not how it really happened and you just lied to me, there is so much data we have to go through right now, and all the data I have seen tells me that’s not how it really happened” (FM34-52, 3-19).

The Nine Steps for a Confession

The third edition of the *Criminal Interrogation and Confessions* hand-guide is a tool used to train detectives, interrogators, police jurisdictions, and military personnel alike on how to ‘properly’ interview and groom suspects. Authors Fred Inbau, John Reid, and Joseph Buckley created a step by step book to ensure a confession. One of the most influential points of this hand-guide are the nine steps for a confession that are only to be used in the cases that, according to the authors, “interrogation of suspects whose guilt seems definite or reasonably certain.”

- Step 1: “Involves a direct, positively presented confrontation of the suspect with a statement that he is considered to be the person who has committed the offense” (Inbau and Reid 79). They should listen to the response but immediately repeat the accusation again. If the accused is passive both times, that indicates deception. If they deny it, move to step 2.
- Step 2: “The interrogator expresses a supposition about the reason for the crime’s commission, whereby the suspect should be offered a possible moral excuse for having committed the offense. To accomplish this the interrogator should attempt to affix moral blame for the offense upon some other person (like an accomplice), the victim, or some particular circumstance… if a suspect seems to listen attentively to the suggested theme, or even, deliberates over it, that reaction is strongly suggestive of guilt” (Inbau and Reid 79)
- Step 3: This step is for the suggested procedures for handling the “initial denials of guilt” (Inbau and Reid 80). They are told to try to cut them off ; if the suspect does not allow the denial to be cut off then they are innocent. If the person has a weak denial or “goes along with the interrogators theme” they will probably be guilty. Step 3 is for affirmative reactions and aims to stop denials.
- Step 4: “Overcoming the suspects’ comments about the moral excuse element presented in step 2… responses where the suspect did not or could not have done the crime are normally offered by the guilty” (Inbau and Reid 80).
- Step 5: The attainment and retention of suspect’s full attention. “The interrogator will clearly display a sincerity in what he says” (Inbau and Reid 80). Here touching and gesturing to gain “closeness” between the suspect and interrogator is encouraged.

- Step 6: If suspect is quiet or looks like they are about to give up, the interrogator needs to reinforce eye contact. Tears from suspect indicate deception and giving up (Inbau and Reid 80).
- Step 7: Here the "alternative question, a suggestion of a choice to be made by the suspect between an acceptable and unacceptable aspect of the crime," will be used. "This choice will be in the form of a question such as 'Was this the first time, or has it happened many times before?'.. whichever alternative is chosen by the suspect, the net effect of an expressed choice will be the functional equivalent of an incriminating admission" (Inbau and Reid 80).
- Step 8: The goal in this step is to "have the suspect orally relate the various details about the offense that will serve ultimately to establish guilt" (Inbau and Reid 81).
- Step 9: This is the step where they "gather the confession…whether it be oral and/or written" (Inbau and Reid 81).

This procedure is put in place for an individual to incriminate themselves. "From the initial accusatory confrontation (step one) and throughout the development of the theme (step two), the interrogator should have conveyed to the suspect that the case has clearly indicated guilt, and, consequently the only reasons for the interrogator to be talking to him at all are to determine the circumstances of the crime and to obtain an explanation for its commission" (Inbau and Reid 142). The tactics increase anxiety and inflate the benefits (really there are not many) over the costs of offering a confession. According to Kassin, these nine steps have three important tactics woven through out (Kassin 43). The first, he points out, is custody and isolation. Through these steps, the confinement away from one's social setting, and usually the ambiguity of the custody, causes unnecessary stress. This stress can make one feel the need to

get out of the situation as soon as possible, usually by cooperation and eventually a confession. The second tactic is confrontation. It is where the accusation and blame of the crime is audibly placed on the suspect on behalf of the interrogator. Here, the ammo is unloaded: real or fake evidence is cited, seemingly showing that there is a case against the suspect. Denial from the purported suspect is blocked. The last stage is minimization. This is where the interrogator minimizes Miranda as a formality, and they will minimize the punishment and maximize leniency (only of course if the suspect adheres to their rules and confesses). The interrogator will morally justify the crime in by using fake sympathy with the suspect. They will also minimize all other routes of leaving the interrogation room (Kassin 43).

Kassin pointed to a study from Leo (in an article titled "Inside the Interrogation Room"), who overserved 182 videotaped interrogations. Those interrogations were spread across three different police jurisdictions in California. Leo found that the detectives used 5.62 different techniques on average during each interrogation, and he found that 64% of the suspects in which those techniques were used on made self-incriminating statements (Kassin 44).

Theming

Immediately following step 1, the interrogator is told to develop a theme, which "involves presenting a moral excuse for the suspects commission of offense or minimizing the moral implications of the conduct" (Inbau and Reid 83). These themes can be used for either emotional offenders or non-emotional offenders.

Common Types of Themes for Emotional Offenders

- Theme 1: "Sympathize with suspect by saying anyone else under similar conditions and circumstances might have done same thing" (Inbau and Reid 97).

- Theme 2: “Reduce suspects feeling of guilt by minimizing moral seriousness of offense” (Inbau and Reid 99).
- Theme 3: “Suggest a less revolting and more morally acceptable motivation or reason for the offense than that which is known or presumed” (Inbau and Reid 102).
- Theme 4: “Sympathize with suspect by condemning others” (Inbau and Reid 114).
- Theme 5: “Appeal to suspect’s pride by well selected flattery” (Inbau and Reid 118).
- Theme 6: “Point out possibility of exaggeration on the part of the accuser or victim, or exaggerate the nature and seriousness of the event itself” (Inbau and Reid 120).
- Theme 7: “Point out to suspect the grave consequences and futility of continuation of criminal behavior” (Inbau and Reid 126).

Common Themes for Non-emotional Offenders

“The most effective tactic and techniques is to use on the non-emotional offender are those based primarily upon a *factual analysis approach*. This approach means appealing to the suspect’s common sense and reasoning rather than his emotions; it is designed to convince him that his guilt already is established or that it soon will be established and, consequently there is nothing else to do but admit it” (Inbau and Reid 78).

- Theme 1: “Seek admission of lying about some incidental aspect of the occurrence” (Inbau and Reid 128).
- Theme2: “Have suspect place himself at the scene of the crime or in contact with the victim or occurrence” (Inbau and Reid 130).
- Theme 3: “Point out futility of resistance to telling truth” (Inbau and Reid 131).
- Theme 4: Is “used when co-offenders are being interrogated and previously described themes have been ineffective, play one against the other” (Inbau and Reid 132).

The Room Setup

Step 5 of the interrogation process is the procurement and retention of suspects attention. In chapter three, the essential elements of a successful interrogation are laid out (Inbau and Reid 159). The first is physical gestures. By moving a chair physically closer to the suspect, one can and will decrease the suspect's confidence while simultaneously increasing their anxiety. The interrogator is told to pat a male suspect's shoulder and to hold a female suspect's hand. The next is chair proximity, which, according to Inbau and Reid, "should be a gradual and unobtrusive process, and should seem to be the natural result of the interrogator's interest and sympathy (4-5 ft or closer)" (Inbau and Reid 160). The interrogators are then told to lean off the edge of the chair to get even closer and to continuously move further so they can touch the suspect if needed.

In the cross examination of interrogator 2 for the defense counsel, Spinner asks about the proximal technique of interrogation which involves adjusting distance between the interrogator and suspect. Interrogator 2 agreed that it is important for the interrogator to have rollers on his chair is because it aids the interrogator in applying this physical proximity technique. In the interrogation, Sergeant Leahy sat in an immobile chair while interrogator 2 sat in chair with rollers on it (Leahy ROT 726). The next step is to keep eye contact with the suspect. By doing this, the interrogator can establish dominance while manipulating any anxiety that the suspect may be feeling.

CHAPTER V

POSTMODERNISM IN THE INTERROGATION ROOM

Fake Sincerity and Rapport

A simulacrum interrogation is called an interview. Having the Miranda rights not read until the confession occurs, or when interrogator has what they want, is an example of how poststructuralism has infiltrated interrogation proceedings. If Miranda was read first, there would be no controversial technique. Likewise, there is no real custody, just a limbo custody. Sergeant Leahy was in custody in his commander's own home, with nowhere to put his contacts or anyway to talk to anyone. In Leahy's case, these were ways to gather info while simultaneously breaking down him down. Limbo and simulacrum custody are when the interrogators have McDonaldized (a phrase first coined by Ritzer) the suspect to a point where the suspect does not think they are in custody. This is a McDonaldized ambiguity because the interrogator can get a coerced confession out of a suspect without the suspect even knowing that they are a suspect at all. Leahy had his watch taken away, and he was in custody without knowing it. This is a staged abuse of power, where the suspect does not realize they can get up, walk away, and ask for a lawyer because of the ambiguity of the situation.

Fake sincerity and fake rapport are key in a postmodern society. No one actually cares what is going on in that person's life, but it is another way to gather information all while stimulating a fake trust between the interrogator and interrogated. In the manual, it is stated that "an interrogator must in effect bleed sincerity" (Inbau and Reid 52).

Decentering and Deconstruction

Capital T-truth is factual truth that is based on objective reasons. In a post-truth America, this capital T-truth is no longer the center. Instead, the notions of what is true or ethical is warped, and is now focused on the marginal, lower case t-truth. Often, these truths are fabricated notions doctored by humans which gain status and wide acceptance as truths. Capital T-truths are based on empirical data as well, while postmodern narratives are not.

For a long time, the image of the criminal justice system was privileged. People truly believe that only guilty people are the ones behind bars, and that confessions are untouchable because of the tall tale that 'innocent people never confess'. As discussed through Sergeant Leahy's case, this is not true. Whether it be the tactical techniques from interrogators, the sheer want to get out of the ordeal, emotional or physical exhaustion, or concern for family and friends, all are reasons for why an innocent suspect can spew a detailed confession.

More and more people are having less faith in the criminal justice process, and thus the image has been deconstructed. It can be said that the criminal justice system is no longer centered on justice. Now, in a post-truth society, it is a blame and guilt placing game which is no longer focused on what the exact fact or capital T-truth of the case is.

Meta-narratives

Lyotard, in his book *The Postmodern Condition,* argued that when he was writing society had reached the end of 'meta-narratives' (Lyotard). Therefore, he believed that there is no single dominant theory for the world; there was no solo theory explained universal human values or the terms which it entailed. We see this in the interrogation room where the overarching narrative of guilt and innocence is lost and replaced with littler stories that piece together a story (which doesn't have to be the true story) in order to gather a confession. Capital T-truth is lost with the

loss of overarching and dominant meta-narratives, because there is no centralized version of what is right and to be judged on. Lyotard believed that in a postmodern society, objective truth would be hard to come by because what could pass for lower case t-truth is a tricky reflection. Lyotard argued that it reflected those in power, but I think it goes deeper and reflects the divisions and the fact that society just can't make up their minds in agreement to anything anymore.

If we go off Lyotard's idea that the truth is in the hands of those in power, that could help describe Fauconnet's idea of why responsibility is placed on those lower in the food chain. I would also expect it to describe what happens in the walls of the interrogation room. The interrogator, with the power that society and those around him grants him, has privilege. The interrogator has the right, by the standards of a post-industrial society, to force small t-truth on the suspect through their own narratives because the suspect is not privileged like they are. There is a level of unsaid respect there; the interviewee can just walk out, but they don't, and therefore they are at risk for manipulation.

Privileged and Deprivileged

As mentioned in earlier chapters, to be privileged means to give special attention or attribute a priority to an argument, person, event, or text. Postmodernists oppose privileging any specific perspective. On the opposite hand is to be deprivileged, which means to cut everything and everyone down to size.

In sergeant Leahy's case, it was those in power in the military who were privileged. The two special agents who interrogated him had enough unspoken privilege that Sergeant Leahy truly believed every word they said. He believed he couldn't get up and walk out, he believed

they were telling the truth about all the evidence and oral confessions against him, and he also believed them that the delayed and informal waiving of his rights was standard protocol.

Sergeant Leahy, First Sergeant Hatley, and the others tried for the case were deprivileged. Their titles were stripped, and in court, their credibility fell short to the special agents and others who pointed their fingers. Once the blame rested on these soldiers, any ounce of honor they once had (like Leahy's Purple Heart Medal) left their titles. Sergeant Leahy said that there was combat-related deaths of two soldiers from Leahy's unit (Company A, 1st Battalion, 18th Infantry Regiment) shortly before the canal incident played a role in what happened. Not only was he suffering from the loss of his buddies, he was experiencing exhaustion, sleep deprivation, and PTSD from being out in a war zone for months. Even though these factors played a huge role in his cognitive functions and mental state, the court deprivileged his human fragility. He was quickly cut down and any mitigating factors were voided.

Lying and Theming

Privilege, in many cases, will lead to lying. The interrogator will lie about social isolation in the interrogation room. The interrogator wants to essentially "avoid creating the impression of an investigator.. [and] avoid coming off like you are seeking a confession" (Inbau and Reid 10-49).

Sergeant Leahy's case was riddled with lying. Interrogator 1 agreed to the defense counsel that he told Sergeant Leahy "I'm going to be honest and up front with you, I'm not going to try to play mind games with you" (Leahy ROT 536). However, this was a lie, as most of the interaction in the interrogation room was staged. A major trend seen in both the interrogation and trial was lying. A confession persuaded by false evidence and lying was permissible in the court by the Military Judge. The interrogators lied to Leahy about having evidence and other

confessions. We see that interrogator 1, the lead interrogator for Leahy, recognized that in the techniques the interrogator can, and is often encouraged to lie, whereas in everyday social behavior lying is not acceptable (Leahy ROT 533).

Later on, Spinner, the defense counsel, asked interrogator 1, "When you're learning the concepts and tactics of 'The Reid Interrogation Method,' you were taught that if you actually theme or pretended to sympathize or empathize with the person's situation; you can, for lack of a better term, use this as a tactical advantage to get more information from them?" (Leahy ROT 539). Interrogator 1 agreed. Theming is another way to persuade the suspect. Theme development can be used to manipulate a person into making a statement (Leahy ROT 538). The lead interrogator, interrogator 1, agreed that themes are created for that person to gravitate toward in order to get them "to give a more inculpatory statement" (Leahy ROT 538). Interrogator 1 also agreed that he was theming when he told sergeant Leahy that "the detainees were obviously terrorists and they deserved to be killed" at approximately 45 minutes and 20 seconds into the interrogation. Later, 30 minutes into the interrogation, Interrogator 1 said "right now it's a matter of determining, 'were these guys f'ing monsters; were they going around just killing people; or were these guys just so frustrated because they had recently lost some people from the company, they had just had a guy shot on guard duty" (Leahy ROT 541). In court, interrogator 1 agreed that the transaction between him and Leahy was a theme. At 37 minutes into the interrogation, interrogator 1 said "…yes, sir. Pretty much any time I was talking to Sergeant Leahy after his rights advisal I was theme developing, so everything that I'm saying to him…. is a theme in some way, shape or form" (Leahy ROT 542).

Later, a transaction occurred between the defense counsel, Frank spinner, and the lead interrogator. Interrogator 1 agreed that 30 minutes into the interrogation, before Sergeant Leahy

had executed his rights/waiver, he handed Sergeant Leahy the rights/waiver form (Leahy ROT 557-558). He also agreed that he took it right back from him, and at approximately 31 minutes into the interrogation he stated, "… it's important that you know we are not accusing you of anything today… you're a suspect just like every person on that patrol is that day. It's important that you know that" (Leahy ROT 558). Spinner asked why he had said that, when he never explained to sergeant Leahy of the legal difference between being a suspect and accused. Interrogator 1's response was "Sir, I explained to him that I'm not accusing him. An accusation has been made prior to him coming to our office, which makes him an accused" (Leahy ROT 558). He also added that he did not explain the legal difference between the two because he himself did not know, even though he told Sergeant Leahy that it was very important that he understood the difference. Interrogator 1 admitted in these cross-examinations that he was building themes even before he was in the interrogation room with Leahy. Interrogator 1 was incorrect when he said, "he's a suspect to us and I am not accusing him". Accusing and suspecting someone are practically the same thing, and both require Miranda warnings. Interrogator 1 was arguing that because he was suspecting Leahy, he did not have to read Leahy his rights immediately. However, the waiving of one's rights against self-incrimination is not a formality, it is a serious act.

Another example of lying were the references to other people in the interrogation room. At 35 minutes and 59 seconds into the interrogation, Interrogator 1 told Sergeant Leahy that First Sergeant Hatley was in the CID building and was talking (Leahy ROT 537). However, at that time, First Sergeant Hatley had invoked his rights over an hour prior, but during cross-examination, interrogator 1 agreed to not be aware of that at the time. At 36 minutes into the interrogation, interrogator 1 claimed to have known First Sergeant Hatley and that he was 'a

great guy'. But when the defense counsel probed him, he admitted to knowing of him, not actually knowing him. Interrogator 1 later agreed that he, in fact, did not know that First Sergeant Hatley was talking, and he just assumed he would take the blame. At 47 minutes into the interrogation room, he told Sergeant Leahy that First Sergeant Hatley, was "sitting right here and he was worrying about his retirement" (Leahy ROT 538). However, he later agreed that he did not know that First Sergeant Hatley had actually invoked his rights over an hour before. Later on, at 52 minutes in, he said, "First Sergeant really is a stand-up guy," and that, "First Sergeant Hatley knew that he f'ed up," and that First Sergeant Hatley had told CID, "Listen, here's the deal…" (Leahy ROT 540). Interrogator 1 agreed that he said those phrases and that none of that was true during cross-examination. Interrogator 2 also agreed that during the interrogation he told Sergeant Leahy that First Sergeant Hatley had taken responsibility and that he had said "It's all on me" (Leahy ROT 732). He agreed in court that he knew that First Sergeant Hatley had invoked his right to speak to an attorney an hour earlier that morning and that it was all a lie.

Later on, interrogator 1 agreed that he used a technique called "presenting the alternative question", where you say you have a certain amount of evidence against the person being interrogated (Leahy ROT 543-545). Interrogator 1 agreed this was done when he told Sergeant Leahy that "he knew Sergeant Leahy, First Sergeant Hatley, and Sergeant First Class Mayo had pulled four detainees out of the back of the Bradley, put them on their knees and then shot them" (Leahy ROT 551-552). Likewise, 26 minutes into the interrogation (before Sergeant Leahy's rights were read) interrogator 1 told Sergeant Leahy that he knew that detainees has been killed in Iraq. Interrogator 1 agreed that in the interrogation technique you fend off any denial from the person "all in an effort to establish in that person's mind that they've been caught" (Leahy ROT

551). At 55 minutes, interrogator 1 also told Sergeant Leahy "We now have enough evidence, you guys are caught." Afterwards, interrogator 1 presented the alternative question, which were both good and bad reasons for committing the alleged crime. The bad reason he gave for committing the crime was that "he killed people because he was a f'ing monster", and the good reason the crime was "utter frustration right from the fact that a member of his unit was shot on guard duty; that his mission was pointless, and the terrorists they were arresting were routinely being put back on the street" (Leahy ROT 545). Interrogator 1 later admitted that the point of the interview was to convince Sergeant Leahy that he was guilty.

Hyper-reality and Pastiche

If we were to look at the criminal justice system through a post-modern lens, it would reflect a hyper-reality. A hyper-reality is where reality has collapsed and is exclusively image, illusion, or simulation. The model is more real than the reality it supposedly represents. The criminal justice is no longer the strong structure of right and wrong it once was set out to be. Instead, it is a shell of that, where facts of a case can easily be trumped by a coerced confession.

Interrogators are allowed to lie, whereas suspects are not. The laws that interrogators are bound to are pastiche, where they can pick and choose what to adhere to on a case by case basis. Miranda rights have also become a hyper-reality. It no longer holds the civilian protection it was crafted for, but instead has been viewed as a "formality" for many interrogators.

CONCLUSION

Sergeant Leahy served in the United States military and earned a Purple Heart in Iraq, but he believed he was following orders as he understood them and was accused of having committed a war crime. With the use of standardized interrogation techniques, he was forced into a confession of a crime and was sentenced to life in prison. In Leahy's case specifically, the interrogator used tactics such as establishing fake rapport, using a rolling chair while Leahy was stationary, lying to him, and more. The defense attorney on this case wanted to exclude the videotaped confession because it was coerced, but the Military Judge allowed it because the interrogator himself was not personally coercive, he just used interrogative techniques that were (note here that the judge realized the technique was coercive and still allowed it). All courts that have taken up this issue have similarly ruled that the interrogator is allowed to lie, so long as they are following a technique that allows for deceit, even though it is a federal law that an interviewee cannot lie.

WORKS CITED

Baudrillard, Jean. *America*. London: Verso, 1988.

Fauconnet, Paul. *Responsibility: A Study in Sociology. Unpublished translation.* Translated by William Jeffrey, Jr. Cincinnati, OH: University of Cincinnati College of Law. [1928] 1978.

"History of Miranda Warning." *Miranda Warning*, www.mirandawarning.org/historyofmirandawarning.html.

Illing, Sean. "The Post-Truth Prophets." *Vox*, Vox, 16 Nov. 2019, www.vox.com/features/2019/11/11/18273141/postmodernism-donald-trump-lyotard-baudrillard.

Inbau, Fred & Reid, John. E. *Criminal Interrogation and Confessions*. Jones & Bartlett Learning, 2013.

Kamisar, Yale. "What is an Involuntary Confession - Some Comments on Inbau and Reid's Criminal Interrogation and Confessions." Rutgers Law Review, vol. 17, no. 4, Summer 1963, p. 728-760. HeinOnline.

Kassin, Saul & Gudjonsson, Gisli. "The Psychology of Confessions - a review of the literature and issues." Psychological Science. p. 33-67, 2004.

Leahy, United States Army Record of Trial (ROT): 2009.

Lorenzo, Ronald. *The Puritan Culture of Americas Military: U.S. Army War Crimes in Iraq and Afghanistan*. Ashgate, 2014.

Mestrovic, Stjepan Gabriel. *Durkheim and Postmodern Culture*. A. De Gruyter, 1992.

Mestrovic, Stjepan Gabriel. *The "Good Soldier" on Trial: A Sociological Study of Misconduct by the U.S. Military Pertaining to Operation Iron Triangle, Iraq*. New York: Algora Pub, 2009.

Mestrovic, Stjepan Gabriel. *The Trials of Abu Ghraib: an Expert Witness Account of Shame and Honor*. Paradigm Publishers, Boulder, Colo.; London, 2007.

Rorty, Richard. *Contingency, Irony, and Solidarity*. Cambridge University Press, 1989.

Rosenau, Pauline Marie. *Post-Modernism and the Social Sciences: Insights, Inroads, and Intrusions*. Princeton University Press, 1992.

Rydholm, Jane. "Miranda: The Meaning of Custodial Interrogation." *Www.nolo.com*, Nolo, 20 June 2014, www.nolo.com/legal-encyclopedia/miranda-the-meaning-custodial-interrogation.html.

United States Department of the Army. "FM34-52 Intelligence Interrogation." Headquarters, 1992.